

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-04-2007

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 6669 of 2007
and
M.P. Nos. 1 and 2 of 2007
-o-

S. Santhakumar ... Petitioner

Versus

1. The Director
Municipal Administration
Ezhilagam, Chepauk
Chennai - 600 005

2. The Commissioner
Arakonam Municipality
Arakonam - 631 001
Vellore District

3. The Chairman
Arakonam Municipality
Arakonam - 631 001
Vellore District

4. Thiru. Parameswaran
Municipal Engineer
Tender Schedule Officer
Arakonam Municipality
Arakonam - 631 001
Vellore District

5. Thiru. Shanmugam
Junior Engineer
Tender Schedule Officer
Arakonam Municipality
Arakonam - 631 001
Vellore District

6. S. Rameshbabu

7. K. Pasupathi

8. K. Rajendiran

<https://hcservices.ecourts.gov.in/hcservices/>

9. V. Kesavan

.. Respondents

Petition under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mrs. G. Thilakavathi
For Respondents : Mr. I. Paranthamen
Government Advocate for R1

Mr. Raja Kalifullah
Government Pleader for RR2 & 3

Mr. Jermiah for RR6 to 9

ORDER

This writ petition is listed today for admission and I heard the counsel for both sides.

2. The prayer in this Writ Petition is for a Writ of Certiorarified Mandamus calling for the records pertaining to the resolution of the third respondent's meeting notice dated 16.02.2007 with reference to item No.(8) relating to Sl.Nos. (3) and (4) work of the re-tender notification dated 02.02.2007 and quash the same and consequently confirm the tender contract to the petitioner with reference to Sl.Nos. (3) and (4) work and issue work order.

3. The case of the petitioner is that the second respondent/municipality invited sealed tenders for erection of electrical panel board for 120 H.P. strength as part of the Part-II scheme for 2006-2007 relating to electrification of the rural area and also for supply and delivery of 15 H.P. Centrifugal Mono Block Motor Pumpset, which are mentioned as serial Nos. 3 and 4 respectively in the sealed tenders. In so far as serial No.3 is concerned, along with the petitioner, four other persons have submitted their tenders and in serial No.4, along with the petitioner, two other persons have submitted their tenders. According to the petitioner, the respondents, in total deviation of the procedures contemplated, at the instance of the third respondent, opened the petitioner's tender with ulterior motive and thereafter permitted the other participants to withdraw their offer so as to non-suit the petitioner, as he quoted 5% lesser than the estimated cost of the municipality for the said works. When the above said illegalities were brought to the notice of the second respondent, he ignored it and proceed to pass a resolution on the scheduled date of meeting namely 19.02.2007 and resolution No.8 was passed on that day.

4. The case of the respondents 2 and 3 is that on earlier occasion, for construction of public toilet under Vambay Scheme, work was entrusted to the petitioner, but he failed to even commence the work, hence, the municipality was forced to carry out the said work; that the municipality issued notification for four works on 29.12.2006

calling for tenders on 31.01.2007 but nobody purchased the tender schedule, hence, re-tender was called for on 02.02.2007; that the petitioner purchased tender schedules for works in respect of item Nos. 3 and 4 of the said re-tender notification dated 02.02.2007 along with other persons. The other persons participated in the tender withdrew their tenders within the allowed time before opening the tenders. The petitioner alone stood, hence, the matter was placed before the Municipal Council to decide in the ordinary council meeting to be held on 19.02.2007 as to whether the offer made by a single person could be accepted. The said subject matter was included in the agenda for the said meeting and circulated to the councilors on 16.02.2007. The averment that only after opening of the petitioner's tender, the other tenderers were allowed to withdraw their offers is incorrect. The municipal council, in their meeting held on 19.02.2007 decided not to accept the sole tender of the petitioner, besides that it considered the past incident that the petitioner has not completed the work assigned to him under Vambay Scheme. The re-tender for the scheme was called for fixing the date for purchase of the tender schedules as 08.03.2007 and opened on 09.03.2007 as per the Rules, work was entrusted to the successful tenderer who has almost completed the work.

5. Mrs. Thilagavathi, learned counsel appearing for the petitioner submitted that to non-suit the petitioner, the other tenderers were allowed to withdraw their offer after opening of the petitioner's tender; that when other participants withdrew their offer, the second respondent is duty bound to accept the offer made by the petitioner, hence, the resolution passed by the municipal council, rejecting the petitioner's tender and deciding to go for re-tender is unsustainable in law; that the second and third respondents now accepted the tender of 7.04% lesser than the estimated cost by imposing a strange condition of additional security money deposit of about Rs.25,000/- whereas the petitioner's tender of about 5% less than the estimated cost was rejected on the ground sub-standard quality only could be supplied, which is nothing but a discrimination and prayed for allowing of the writ petition.

6. The learned Government Pleader appearing for the respondents 1 and 2 submitted that taking into consideration of the fact that other tenderers withdrew their tenders within the time allowed before opening, the petitioner was the only person stood, the matter was forwarded to the Council, which, after deliberations, considering several aspects, including the antecedent of the petitioner and decided to reject the tender of the petitioner and resolved for re-tender, which was done accordingly, following the procedures, now the offer of the successful tenderer is accepted, work order passed, who has also almost completed the work and prayed for dismissal of the writ petition.

7. The arguments of the counsel on both sides were considered and records perused. It is contended by the petitioner that he participated in two items of work along with other persons, after opening of his tender, the respondents 1 and 2 allowed to withdraw the tenders of respondents 6 to 9 with an intention to reject his tender, though he quoted 5% lesser than the estimated cost of the municipality

for the said works. The respondents 2 and 3 contended that even before opening of the tenders, the respondents 6 to 9 sought to withdraw their tenders within the time allowed, which they are entitled to, hence, the same was permitted and thereafter it was found that the petitioner is the sole tenderer, hence, the matter was referred to the Council, which rejected the tender of the petitioner taking into consideration of his antecedent. It is the further case of the respondents 2 and 3 that in earlier occasion, the work entrusted to the petitioner to construct a toilet was not even commenced by him, with the result, the municipality was forced to carry out the said work, considering the same, the Council felt that it is not proper to entrust the work to the petitioner and ultimately rejected and resolved for re-tender.

9. The general rule is that when an authority invites tender for a contract, it reserves the right to reject any tender even of the lowest because it has the liberty to choose any person for a contract provided it has the right for good and sufficient reasons assigned, followed (**State of U.P vs. Vijay Bahadur Singh and others**) AIR 1982 SC 1234 wherein the Honourable Supreme Court held in Para-3 thus:-

"3. It appears to us that the High Court had clearly misdirected itself. The conditions of auction made it perfectly clear that the Government was under no obligation to accept the highest bid and that no rights accrued to the bidder merely because his bid happened to be the highest. Under Condition No.10 it was expressly provided that the acceptance of bid at the time of auction was entirely provisional and subject to ratification by the competent authority, namely, the State Government. Therefore, the Government had the right, for good and sufficient reason, we may say, not to accept the highest bid but even to prefer a tenderer other than the highest bidder....."

10. The Court may interfere, if in making its choice, the authority violates Article 14 of the Constitution by excluding persons by discrimination or violates the terms and conditions laid down in the tender notice or acts arbitrarily or unreasonably or contrary to public interest or adopting unfair secret procedure, followed (**Ram and Shyam Company vs. State of Haryana and others**) AIR 1985 SC 1147 wherein in Para No.13, it was held thus:-

"13. A unilateral offer, secretly made, not correlated to any reserved price made by the fourth respondent after making false statement in the letter was accepted without giving any opportunity to the appellant either to raise the bid or to point out the falsity of the allegations made by the fourth respondent in the letter as also the inadequacy of his bid. The appellant suffered an unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fairplay in action. When he gave the highest bid, he could not have been expected to raise his own bid in the absence of a competitor....."

11. In this case, the respondents 2 and 3 pointed out that in the petitioner was entrusted with the work of construction of toilet, the same was not even commenced by him, hence, the municipality was forced to carry out the said work. The said

avermment is not disputed by the petitioner in the reply affidavit or in the argument. The authority has every right to enter into a contract with a person, who has faithfully performed his contract in the past in preference to an undesirable or unsuitable or untired person. Moreover, the authority is not bound to accept the highest/lowest tender but may accept a lower/higher one in case it thinks that the person offering the lower/higher tender is on an overall consideration to be preferred to the highest/lowest tenderer, followed, **(Trilochan Mishra vs. State of Orissa and others) AIR 1971 Supreme Court 733**, wherein the Honorable Supreme Court held in Para-15 thus:-

"15. With regard to the grievance that in some cases the bids of persons making the highest tenders were not accepted, the facts are that persons who had made lower bids were asked to raise their bids to the highest offered before the same were accepted. Thus, there was no loss to Government and merely because the Government preferred one tenderer to another no complaint can be entertained. Government certainly has a right to enter into a contract with a person well known to it and specially one who has faithfully performed his contracts in the past in preference to an undesirable or unsuitable or untired person. Moreover, Government is not bound to accept the highest tender but may accept a lower one in case it thinks that the person offering the lower tender is on an overall consideration to be preferred to the higher tenderer."

12. In the case on hand, the Municipal council passed a resolution dated 19.02.2007, a copy of the same was produced by the learned Government Pleader for the respondents 2 and 3 wherein it is specifically found mentioned that in earlier occasion the petitioner failed to complete the work, which was assigned to him, indeed, at that time also, he quoted 0.09% lesser than the estimated cost of the municipality. The said reason assigned by the respondents 2 and 3 is perfectly valid. It is also brought to the notice of this Court that in the re-tender, the offer made by one successful bidder was accepted, work was entrusted, who has almost completed the said work.

13. For the said reasons, this Court finds no merit in the writ petition, the same is liable to be dismissed and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

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+one C.C. to MR.G.Jeramiah Advocate CCSR.27666

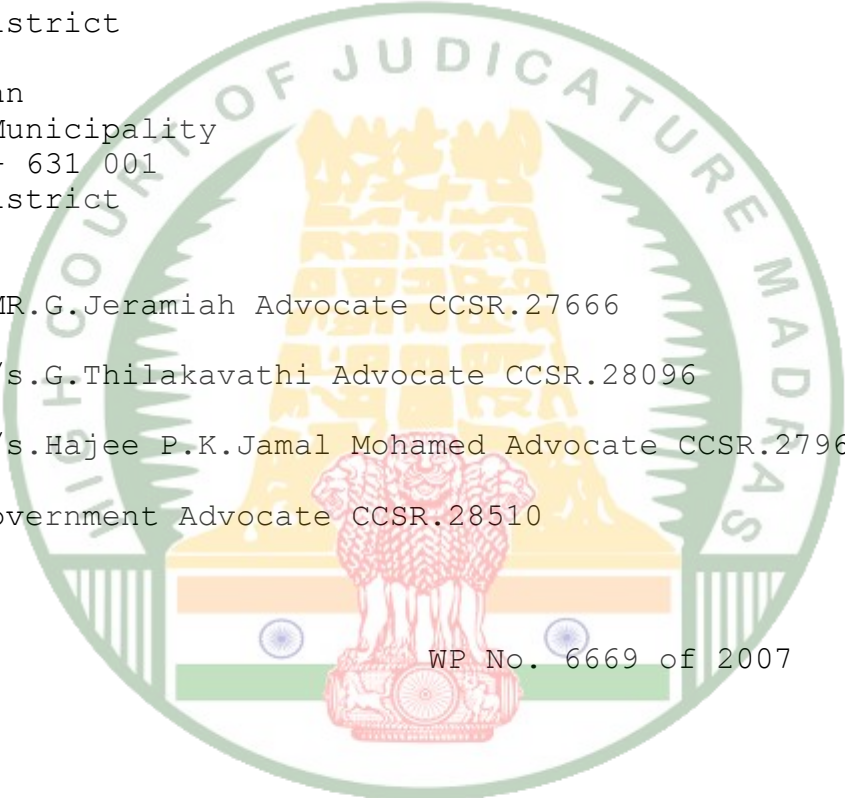
+One c.c.to M/s.G.Thilakavathi Advocate CCSR.28096

+One C.C.to M/s.Hajee P.K.Jamal Mohamed Advocate CCSR.27963

+One C.C.to Government Advocate CCSR.28510

MBS (CO)
KS (11/05/07)

WP No. 6669 of 2007



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